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Oceans and the law of the sea

Letter dated 1 October 2010 from the Permanent Representative of Ukraine to the United Nations addressed to the Secretary-General

I have the honour to transmit herewith a draft comprehensive convention on the suppression of acts of piracy at sea, prepared by the Government of Ukraine for consideration by the Member States (see annex).

I should be grateful if the present letter and the annex could be circulated as a document of the General Assembly under agenda item 74, "Oceans and the law of the sea".

(*Signed*) Yuriy A. **Sergeyev**
Ambassador
Permanent Representative

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Annex to the letter dated 1 October 2010 from the Permanent Representative of Ukraine to the United Nations addressed to the Secretary-General

Draft comprehensive convention on the suppression of acts of piracy at sea

The States parties to this Convention,

Recalling the existing international conventions relating to various aspects of the problem of piracy at sea,

Deeply concerned about the increasing number of acts of piracy at sea,

Recognizing the necessity of strengthening international cooperation for the suppression of acts of piracy at sea,

Stressing that international mechanisms for bringing perpetrators to justice, together with national criminal prosecution procedures, constitute an important instrument in the fight against such offences,

Realizing the need to develop further the comprehensive legal framework of conventions dealing with the suppression of acts of piracy at sea,

Convinced that, for the effective suppression of acts of piracy at sea, active efforts are necessary to eliminate the causes underlining them,

Having resolved, to take effective measures to prevent acts of piracy at sea and to ensure, by providing for their extradition or prosecution, that perpetrators of such acts do not escape prosecution and punishment,

Have agreed as follows:

Chapter I
Measures at the national level and international cooperation

Article 1
Purpose

The purpose of this Convention shall be to facilitate the cooperation of States in a more effective prevention of piracy as one of the types of transnational organized crime and in the fight against it.

Article 2
Definitions

For the purposes of this Convention:

1. "Piracy" shall mean:

(a) Any illegal act of violence, detention, or any act of depredation, committed for private ends by the crew or the passengers of any private ship or private aircraft and directed against another ship or against persons or property on board such a ship, including any attempt to board and embark upon such ship for

this criminal purpose, on the high seas or in a place outside the jurisdiction of any State;

(b) Any act of voluntary participation in the operation of any ship or aircraft with knowledge of facts making it a pirate ship or a pirate aircraft;

(c) Any act of aiding, inciting, inducing or of intentionally facilitating the performance of the acts referred to in subparagraph (a) or (b);

(d) Any act referred to in subparagraph (a), (b) or (c) if it was committed intentionally by a structured or organized criminal pirate group, which also includes:

(i) Collusion with respect to the commission of a crime of piracy the purpose of which, directly or indirectly, is to obtain financial or other material benefit, as well as the actual commission by one of the participants in the collusion of any act to implement the collusion;

(ii) Active participation by any person belonging to such a group in the commission of a crime or other act which will facilitate the achievement of a criminal purpose, in particular making arrangements for managing and offering advice with respect to the commission of the crime.

2. "Pirate ship or pirate aircraft" shall mean a ship or aircraft, if it is intended by the persons in dominant control of it to be used for the purpose of committing any of the acts referred to in paragraph 1 of this article. The same applies if the ship or aircraft has been used to commit any such act, so long as it remains under the control of the persons guilty of that act.

3. "Structured group" shall mean a group that is not randomly formed for the immediate commission of an offence, but does not necessarily have formally defined roles for its members, continuity of membership or a developed structure.

4. "Organized criminal pirate group" shall mean a structured group existing for a period of time and consisting of three or more persons acting in concert with the aim of committing one or more of the acts referred to in article 2, paragraph 1 of this Convention, who are united with a single plan known to all participants in the group and with functions allocated between the participants in the group for the purpose of fulfilling that plan, with the aim of obtaining directly or indirectly, financial or other material benefit.

5. "Predicate offence" shall mean any act of piracy, as defined in paragraph 1 of this article, as a result of which proceeds have been generated that may become the subject of an offence as defined in article 6 of this Convention.

6. "Proceeds of the crime of piracy" shall mean any property derived from or obtained, directly or indirectly, through the commission of the offence.

7. "Confiscation" shall mean the permanent deprivation of property by order of a court or other competent authority.

8. "Property" shall mean assets of any kind, whether material or immaterial, movable or immovable, tangible or intangible, and legal documents or instruments evidencing title to, or interest in, such assets.

9. "Seizure" shall mean temporarily prohibiting the transfer, conversion, disposition or movement of property, or temporarily assuming custody or control of property, on the basis of an order issued by a court or other competent authority.

Article 3
Scope

1. This Convention, except where otherwise provided, shall apply to the prevention, investigation and criminal prosecution of:

(a) Offences of piracy acknowledged as such in accordance with the provisions of this Convention;

(b) Serious offences, as defined in article 2, paragraph 1 and article 6 of this Convention, if those offences are of a transnational nature and are committed with the participation of an organized criminal pirate group.

2. For the purposes of paragraph 1 of this article, an offence is transnational in nature if:

(a) It is committed in more than one State;

(b) It is committed in one State but a substantial part of its preparation, planning, direction or control takes place in another State;

(c) It is committed in one State but involves an organized criminal group that engages in criminal activities in more than one State; or

(d) It is committed in one State but has substantial effects in another State.

3. The commission of a crime in one State shall be understood as its commission on board a vessel that is flying the flag of that State at the time the crime is committed.

Article 4
Protection of sovereignty

1. States parties shall carry out their obligations under this Convention in accordance with the principles of the sovereign equality and territorial integrity of States, and of non-interference in the internal affairs of other States.

2. Nothing in this Convention shall vest a State party with the right to exercise, in the territory of another State, the jurisdiction and functions which are exclusively within the competence of the authorities of the other State in accordance with its national law.

Article 5
Criminalization of piracy

1. Each State party shall take such legislative and other measures as may be necessary to acknowledge the acts referred to in article 2, paragraph 1 of this Convention.

2. (a) Each State party, taking into account its legal principles, shall also take such measures as may be needed for the establishment of the liability of legal persons for participation in offences involving an organized criminal pirate group, as well as in the offences referred to in article 6 of this Convention;

(b) Subject to the legal principles of the State party, the liability of legal persons may be criminal, civil or administrative;

(c) Such liability shall be without prejudice to the criminal liability of the natural persons who have committed the offences;

(d) Each State party shall, in particular, ensure that legal persons held liable in accordance with paragraph 2 of this article are subject to effective, proportionate and dissuasive criminal or non-criminal sanctions, including monetary sanctions.

Article 6
Criminalization of the laundering of proceeds of crime

1. Each State party shall adopt, in accordance with the fundamental principles of its domestic law, such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:

(a) (i) The conversion or transfer of property, knowing that such property is the proceeds of crime, for the purpose of concealing or disguising the illicit origin of the property or of helping any person who is involved in the commission of the predicate offence to evade the legal consequences of his or her action; (ii) the concealment or disguise of the true nature, source, location, disposition, movement or ownership of or rights with respect to property, knowing that such property is the proceeds of crime;

(b) Subject to the basic concepts of its legal system: (i) the acquisition, possession or use of property in the knowledge, at the time of receipt, that such property is the proceeds of crime; (ii) participation in, association with or conspiracy to commit, attempts to commit and aiding, abetting, facilitating and counselling the commission of any of the offences established in accordance with this article.

2. For the purposes of implementing or applying paragraph 1 of this article:

(a) Each State party shall seek to apply paragraph 1 of this article to the widest range of predicate offences;

(b) Each State party shall include as predicate offences all serious crime as defined in article 2, paragraph 1 of this Convention and the offences established in accordance with articles 5, 7 and 23 of this Convention. In the case of States parties whose legislation sets out a list of specific predicate offences, they shall, at a minimum, include in such list a comprehensive range of offences associated with organized criminal groups;

(c) For the purposes of subparagraph (b), predicate offences shall include offences committed both within and outside the jurisdiction of the State party in question. However, offences committed outside the jurisdiction of a State party shall constitute predicate offences only when the relevant conduct is a criminal offence under the domestic law of the State where it is committed and would be a criminal offence under the domestic law of the State party implementing or applying this article had it been committed there;

(d) The elements of knowledge, intent or purpose required in relation to an offence set forth in paragraph 1 of this article may be inferred from objective factual circumstances.

Article 7
Measures to combat money-laundering

1. Each State party shall institute a comprehensive domestic regulatory and supervisory regime for banks and non-bank financial institutions and, where appropriate, other bodies particularly susceptible to money-laundering, within its competence, in order to deter and detect all forms of money-laundering, which regime shall emphasize requirements for customer identification, record-keeping and the reporting of suspicious transactions.

2. States parties shall consider implementing feasible measures to detect and monitor the movement of cash and relevant negotiable instruments across their borders, subject to safeguards to ensure the proper use of information and without impeding in any way the movement of legitimate capital. Such measures may include a requirement that individuals and businesses report the cross-border transfer of substantial quantities of cash and relevant negotiable instruments.

3. In establishing a domestic regulatory and supervisory regime under the terms of this article, and without prejudice to any other article of this Convention, States parties are called upon to use as a guideline the relevant initiatives of regional, interregional and multilateral organizations against money-laundering.

4. States parties shall endeavour to develop and promote global, regional, subregional and bilateral cooperation among judicial, law enforcement and financial regulatory authorities in order to combat money-laundering.

Article 8
Nationality of a pirate ship or a pirate aircraft

A ship or aircraft may retain its nationality although it has become a pirate ship or a pirate aircraft. The retention or loss of nationality is determined by the law of the State from which such nationality was derived.

Article 9
Right of inspection

A warship which encounters on the high seas a foreign ship, other than a ship entitled to complete immunity, may inspect it if there are impartial grounds for suspecting that the ship is engaged in piracy.

Article 10
Right of seizure

On the high seas, or in any other place outside the jurisdiction of any State, every State may seize a pirate ship or aircraft, or a ship or aircraft taken by piracy and under the control of pirates, and arrest the persons and seize the property on board. The courts of the State which carried out the seizure may decide upon the penalties to be imposed, and may also determine the action to be taken with regard to the ships, aircraft or property, subject to the rights of third parties acting in good faith.

Article 11
Liability for seizure

Where the seizure of a ship or aircraft on suspicion of piracy has been effected without adequate grounds, the State making the seizure shall be liable to the State the nationality of which is possessed by the ship or aircraft for any loss or damage caused by the seizure.

Article 12
Entitlement to seize

1. A seizure on account of piracy may be carried out only by warships or military aircraft, or other ships or aircraft clearly marked and identifiable as being on Government service and authorized to that effect.

2. Each State party shall take such measures as may be necessary to entitle its warships or military aircraft to exercise seizure, as referred to in article 10 of this Convention, irrespective of the nationality of the ship undergoing a pirate attack and the nationality which the pirate ship may have or the registration of the pirate ship or aircraft.

3. Each State party shall take such measures as may be necessary to entitle its officials to carry out actions of a legal nature aboard the ship executing seizure for an offence of piracy defined in article 2, paragraph 1, for the purpose of beginning investigations with respect to the offence.

Article 13
Notification

The State party whose military ship or aircraft has exercised seizure under article 10, shall in accordance with its national legislation, immediately provide the International Maritime Organization with any available information about:

(a) The circumstances of the offence referred to in article 2, paragraph 1;

(b) The circumstances of the seizure of a pirate ship or aircraft or of a ship or aircraft which was seized by means of pirate actions and was under the power of pirates;

(c) The measures taken by it after such seizure;

(d) The actions which this State intends to take in accordance with article 18.

Article 14
Jurisdiction of States parties in respect of an offence of piracy

1. Each State party shall take such measures as may be necessary for the establishment of its jurisdiction with respect to the offences referred to in article 2, paragraph 1 if:

(a) The pirate acts were committed aboard a ship flying the flag of that State at the moment of the offence;

(b) The pirate acts were committed with the use of a ship flying the flag of that State;

(c) The persons who committed the pirate acts are nationals of that State;

(d) The pirate acts were directed against a national of that State.

2. Nothing in this article shall exclude the execution of criminal jurisdiction in accordance with the national law of the State party.

Article 15
Investigation procedure

In the process of investigating a crime of piracy at sea States parties shall be guided by the Code of Practice for the Investigation of the Crimes of Piracy and Armed Robbery against Ships, adopted by the International Maritime Organization.[1]

Article 16
Joint investigations

1. States parties shall consider the possibility of concluding bilateral and multilateral agreements and arrangements, on the basis of which, in connection with cases that are the subject of investigation, criminal prosecution or judicial examination in one or several States, the interested competent authorities may establish bodies to conduct joint investigations. If there are no such agreements or arrangements, joint investigations may be conducted on the basis of an agreement to be concluded in each individual case.

2. The States parties concerned shall ensure respect for the sovereignty of the State party in the territory of which such investigation is to be conducted.

Article 17
Agreements on the transfer of detained persons to other States parties

In cases of the seizure by a State, referred to in article 10, States parties shall cooperate to the fullest extent possible in order to conclude agreements for the purpose of transferring persons detained as a result of such seizure to another State in order for measures to be taken for the criminal prosecution of those persons.

Article 18
Transfer of detained persons to the Special Court

A State party may transfer a person detained as a result of the seizure exercised in accordance with article 10 to the Special Court for criminal prosecution for an offence referred to in article 2.

Article 19
Aut dedere aut judicare

1. A State party which has executed the seizure referred to in article 10 shall be obliged to take appropriate measures for the purpose of beginning criminal prosecution or transfer persons suspected of committing the acts referred to in article 2, paragraph 1. Such transfer may be made to the Special Court, in accordance with the provisions of article 17, or to the State which may establish its jurisdiction in accordance with this Convention.

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[1] International Maritime Organization resolution A.1025(26), annex.

2. Any State party in the territory of which the person who committed the crime referred to in article 2, paragraph 1 or who is suspected of committing it is staying shall be obliged either to transfer persons suspected of committing the acts referred to in article 2, paragraph 1 to the Special Court or to the State which may establish its jurisdiction in accordance with this Convention, or to take appropriate measures to begin criminal prosecution.

3. Each State party shall take such measures as may be necessary for the entitlement of its respective authorities in matters of the criminal prosecution and bringing to justice of persons guilty of committing the offences referred to in article 2, paragraph 1.

Article 20
Extradition

1. The offence of piracy set forth in article 2, paragraph 1 shall be deemed to be included as an extraditable offence in any extradition treaty existing between the States parties. The States parties undertake to include that offence as an extraditable offence in every extradition treaty to be concluded between them.

2. If a State party which makes extradition conditional on the existence of a treaty receives a request for extradition from another State party with which it has no extradition treaty, the requested State party has the option to consider this Convention as a legal basis for extradition with respect to the offence of piracy.

Article 21
Cooperation in the prevention of piracy

States parties shall cooperate in the prevention of the offence set forth in article 2, paragraph 1, in particular by:

(a) Taking all practicable measures to prevent preparations in their respective territories for the commission of the offence;

(b) Exchanging information in accordance with their national law, and coordinating administrative and other measures taken, as appropriate, to prevent the commission of the offence set forth in article 2, paragraph 1.

Article 22
Mutual legal assistance

States parties shall render one another assistance to the fullest extent possible in connection with the criminal prosecution instituted with respect to offences referred to in articles 2 and 6 of this Convention, including facilitation of the reception of evidence which they have and which is necessary for the examination of the respective case. Such assistance shall be rendered in accordance with treaties on legal assistance existing between the States parties, and if there are no such treaties, the assistance shall be rendered in accordance with national law.

Article 23
Confiscation of the proceeds of an offence of piracy and the seizure of property

1. States parties shall adopt, to the greatest extent possible within their domestic legal systems, such measures as may be necessary to enable the confiscation of:

(a) Proceeds of crime derived from offences covered by this Convention or property the value of which corresponds to that of such proceeds;

(b) Property, equipment or other instrumentalities used in or destined for use in offences covered by this Convention.

2. States parties shall adopt such measures as may be necessary to enable the identification, tracing, freezing or seizure of any item referred to in paragraph 1 of this article for the purpose of its subsequent confiscation.

3. If the proceeds of crime have been transformed or converted, in part or in full, into other property, such property shall be liable to the measures referred to in this article, instead of the proceeds.

4. If the proceeds of crime have been intermingled with property acquired from legitimate sources, such property shall, without prejudice to any powers relating to freezing or seizure, be liable to confiscation up to the assessed value of the intermingled proceeds.

5. Income or other benefits derived from the proceeds of crime, from property into which the proceeds of crime have been transformed or converted or from property with which the proceeds of crime have been intermingled shall also be liable to the measures referred to in this article, in the same manner and to the same extent as the proceeds of crime.

6. For the purposes of this article and article 7 of this Convention, each State party shall empower its courts or other competent authorities to order that bank, financial or commercial records be made available or seized. States parties shall not decline to act under the provisions of this paragraph on the ground of bank secrecy.

7. States parties may consider the possibility of requiring that an offender demonstrate the lawful origin of alleged proceeds of crime or other property liable to confiscation, to the extent that such a requirement is consistent with the principles of their domestic law and with the nature of the judicial and other proceedings.

8. The provisions of this article shall not be construed to prejudice the rights of third parties acting in good faith.

9. Nothing in this article shall affect the principle that the measures to which it refers shall be defined and implemented in accordance with and subject to the provisions of the domestic law of a State party.

Article 24
International cooperation for the purposes of confiscation

1. A State party that has received a request from another State party having jurisdiction over an offence covered by this Convention for the confiscation of the

proceeds of crime, property, equipment or other instrumentalities referred to in article 22 of this Convention situated in its territory shall, to the greatest extent possible within its domestic legal system:

(a) Submit the request to its competent authorities for the purpose of obtaining an order of confiscation and, if such an order is granted, give effect to it; or

(b) Submit to its competent authorities, with a view to giving effect to it to the extent requested, an order of confiscation issued by a court in the territory of the requesting State party in accordance with article 22 of this Convention insofar as it relates to the proceeds of crime, property, equipment or other instrumentalities referred to in article 22 situated in the territory of the requested State party.

2. Following a request made by another State party having jurisdiction over an offence covered by this Convention, the requested State party shall take measures to identify, trace and freeze or seize the proceeds of crime, property, equipment or other instrumentalities referred to in article 22 of this Convention for the purpose of subsequent confiscation to be ordered either by the requesting State party or, pursuant to a request under paragraph 1 of this article, by the requested State party.

3. Requests made pursuant to this article shall contain:

(a) In the case of a request pertaining to paragraph 1, subparagraph (a) of this article, a description of the property to be confiscated and a statement of the facts relied upon by the requesting State party sufficient to enable the requested State party to seek the order under its domestic law;

(b) In the case of a request pertaining to paragraph 1, subparagraph (b) of this article, a legally admissible copy of an order of confiscation upon which the request is based issued by the requesting State party, a statement of the facts and information as to the extent to which execution of the order is requested;

(c) In the case of a request pertaining to paragraph 2 of this article, a statement of the facts relied upon by the requesting State party and a description of the actions requested.

4. The decisions or actions referred to in paragraphs 1 and 2 of this article shall be taken by the requested State party in accordance with and subject to the provisions of its domestic law and its procedural rules or any bilateral or multilateral treaty, agreement or arrangement to which it may be bound in relation to the requesting State party and subject to their observance.

5. If a State party elects to make the taking of the measures referred to in paragraphs 1 and 2 of this article conditional on the existence of a relevant treaty, that State party shall consider this Convention to be the necessary and sufficient legal basis.

6. Cooperation under this article may be refused by a State party if the offence to which the request relates is not an offence covered by this Convention.

7. The provisions of this article shall not be construed to prejudice the rights of third parties acting in good faith.

8. States parties shall consider concluding bilateral or multilateral treaties, agreements or arrangements to enhance the effectiveness of international cooperation undertaken pursuant to this article.

Article 25
Disposal of confiscated proceeds of offences of piracy or confiscated property

1. Proceeds of crime or property confiscated by a State party pursuant to articles 23 or 24, paragraph 1, of this Convention shall be disposed of by that State party in accordance with its domestic law and administrative procedures.

2. When acting on a request made by another State party in accordance with article 24, paragraph 1 of this Convention, States parties shall, to the extent permitted by domestic law and if so requested, give priority consideration to returning the confiscated proceeds of crime or property to the requesting State party so that it can give compensation to the victims of the crime or return such proceeds of crime or property to their legitimate owners.

3. In case of need, States parties may give special consideration to concluding international agreements required for the implementation of arrangements reached in accordance with paragraph 2 of this article.

Chapter II
Special Court for Maritime Piracy

Article 26
Establishment of the Special Court

There is hereby established a Special Court for Maritime Piracy, hereinafter referred to as "the Special Court".

Article 27
Jurisdiction of the Special Court

1. The Special Court shall have jurisdiction over the offence referred to in article 2, paragraph 1 of this Convention.

2. The jurisdiction of the Special Court shall cover offences committed after the entry into effect of this Convention.

3. States parties shall acknowledge the jurisdiction of the Special Court.

Article 28
Individual criminal jurisdiction

1. Any person who planned, incited, gave orders for, executed or otherwise facilitated or took part in the planning, preparation or commission of, the offence referred to in article 2, paragraph 1 of this Convention shall bear individual responsibility for that offence.

2. The fact that any of the acts referred to in article 2, paragraph 1 of this Convention was committed by a subordinate shall not exempt his/her superior from criminal responsibility if he/she knew or should have known that the subordinate was going to commit or had committed such acts and if the superior had not taken

necessary and reasonable measures for the purpose of preventing such acts or punishing the persons who committed them.

Article 29
Jurisdiction over persons who have reached the age of 15

The Special Court shall not have jurisdiction over persons who have reached the age of 15 but who at the moment of committing the alleged offence had not reached the age of 15. If a person who had not reached the age of 15 at the moment of committing the alleged offence is aged between 15 and 18, he/she shall be treated with dignity and respect, taking into consideration his/her youth and the desirability of facilitating his/her rehabilitation, reintegration into society and fulfilment of a constructive role, and in accordance with international standards in the sphere of human rights, in particular the rights of the child.

Article 30
Parallel jurisdiction

1. The Special Court and national courts shall have parallel jurisdiction concerning the legal prosecution of persons for the offence of piracy, as defined in article 2, paragraph 1.

2. Furthermore, the jurisdiction of the Special Court shall have priority over the jurisdiction of national courts.

Article 31
Case referral

1. A person suspected of committing the offence defined in article 2, paragraph 1 of this Convention may be transferred to the Special Court by a State party to this Convention.

2. If a case concerning the offence defined in article 2, paragraph 1 of this Convention is examined by a national court of a State party, the Special Court, at any stage of judicial examination, may officially request the national court to submit the case to the Special Court in accordance with the Convention and the rules of procedure and evidence of the Special Court.

Article 32
Non bis in idem

1. Nobody shall be sentenced by a national court for the offence defined in article 2, paragraph 1 of this Convention if he/she has been already sentenced for this offence by the Special Court.

2. A person sentenced by a national court for the offence defined in article 2, paragraph 1 may be brought to justice by the Special Court if the judicial examination by a national court was not unbiased and independent or was intended to keep the accused from being held responsible by the Special Court, or the case was not investigated appropriately.

3. In determining a measure of punishment for the person sentenced for the offence defined in article 2, paragraph 1 of this Convention, the Special Court shall

take into account service of the sentence determined by a national court for this person for the commission of this offence.

Article 33
Applicable law

1. The Special Court shall apply the Convention and the rules of procedure and evidence, adopted by it.

2. In relevant cases, the Special Court shall also apply the principles and norms of International Law, as provided for in article 38 of the Statute of the International Court of Justice.

3. If the application of the above-mentioned sources of law is impossible, the Special Court shall apply common principles of law, taken by it from national laws of the legal systems of the world, including, as appropriate, those of the States which may establish their jurisdiction over an offence of piracy in accordance with the Convention, provided that these principles are not inconsistent with this Convention and international law and internationally accepted norms and standards.

Article 34
Organization of the Special Court

1. The Special Court shall be composed of seven independent judges, among whom there shall not be citizens of one and the same State. The judges shall elect a chair from among their number.

The Special Court shall be also composed of:

(a) Prosecutor;

(b) A secretariat, which serves both the Chambers and the Prosecutor.

2. Within the Special Court there shall be established the Trial Chambers, consisting of three to five judges, for the purpose of examining cases.

3. Within the Special Court there shall be established the Appeals Chamber for the purpose of examining appeals against decisions of the Trial Chambers, in accordance with article 44.

4. Decisions on the establishment of the Trial Chambers and the appointment of members of the Trial Chambers and of the Appeals Chamber shall be taken by the chair of the Special Court.

Article 35
Appointment of judges

1. The position of judge shall be held by unprejudiced and honest persons of high moral character who meet the requirements demanded in their States for appointment to high judicial positions.

2. Judges shall be appointed by the United Nations General Assembly from a list submitted by the Security Council, in the following way:

(a) The Secretary-General shall propose to States Members of the United Nations and States which are not members of the United Nations and which have

permanent observer missions to the principal institutions of the United Nations that they nominate candidates for the position of judge of the Court;

(b) Within 60 days of the Secretary-General's proposal, each State may nominate no more than two candidates who meet the requirements specified in paragraph 1 of this article;

(c) The Secretary-General shall submit the candidacies received to the Security Council. The Security Council shall draw up a list from among those candidacies, taking into account representation of the principal legal systems of the world;

(d) The President of the Security Council shall submit the list of candidates to the President of the General Assembly. The General Assembly shall appoint judges from this list. The candidates who receive an absolute majority of votes of the States Members of the United Nations and States which are not members of the United Nations and which have permanent observer missions to the principal institutions of the United Nations, shall be considered appointed. If two candidates from one and the same State receive the necessary majority of votes, the candidate who received more votes shall be considered appointed.

3. Judges, appointed in accordance with this article, shall be appointed for a four-year term. Their terms of service shall be the same as those of judges of the International Court of Justice. They shall be eligible for reappointment.

Article 36
Rules of procedure and evidence

Judges shall adopt rules of procedure and evidence for the purpose of carrying out judicial examination and appeals, accepting evidence, protecting victims and witnesses and other relevant issues.

Article 37
Prosecutor

1. The Prosecutor shall be responsible for the conduct of the investigation and prosecution of persons suspected of having committed the offence defined in article 2.

2. The Prosecutor shall act independently as a separate body of the Special Court. He/she shall not accept or seek instructions from any Government or any other source.

3. The Office of the Prosecutor shall be composed of the Prosecutor and other qualified officials who may be necessary.

4. The Prosecutor shall be appointed by the Security Council on the recommendation of the Secretary-General. He/she shall be of high moral character and possess the highest level of professional competence and experience in the conduct of investigations and prosecutions of criminal cases. The Prosecutor shall be appointed for a four-year term and shall be eligible for reappointment. The terms of service of the Prosecutor shall be equivalent to the terms of service of an Under-Secretary-General of the United Nations.

5. Officials of the Office of the Prosecutor shall be appointed by the Secretary-General on the recommendation of the Prosecutor.

Article 38
Secretariat

1. The secretariat shall be responsible for the fulfilment of administrative functions and the servicing of the Special Court.

2. The secretariat shall consist of the Secretary and such other personnel as may be necessary.

3. The Secretary shall be appointed by the Secretary-General after consultations with the Chair of the Special Court.

4. The personnel of the secretariat shall be appointed by the Secretary-General on the recommendation of the Secretary of the Special Court.

Article 39
Rights of the indictee

1. All persons shall be equal before the Special Court.

2. An indictee shall have the right, during the examination of the criminal charge brought against him/her, for a just and public examination of the case.

3. The indictee shall be deemed to be innocent until his/her guilt has been proved in accordance with the provisions of the Convention.

4. The indictee shall have the right, during the examination of any charge brought against him/her, in accordance with the Convention, to at least the following guarantees on the basis of full equality:

(a) To be notified promptly and in detail in a language that he/she understands of the nature of and the reasons for the charge brought against him/her;

(b) To have enough time and opportunity for the preparation of his/her defence, and communication/relations with a defence lawyer chosen by himself/herself.

(c) To be judged without undue delay;

(d) To be judged in his/her presence and to defend himself/herself personally or through the defence lawyer chosen by himself/herself; if he/she does not have a defence lawyer, to be notified of this right and to have a defence lawyer appointed for him/her in any case where the interests of justice so require, free of charge for him/her in any such case where he/she does not have enough money to pay for this defence lawyer;

(e) To examine witnesses that testify against him/her or to have the right to have these witnesses examined and to have the right to have his/her witnesses subpoenaed and examined under the same conditions existing for the witnesses that testify against him/her;

(f) To have the assistance of an interpreter free of charge if he/she does not understand the language used in the Special Court or does not speak it;

(g) Not to be forced to testify against himself/herself or to plead guilty.

Article 40
Protection of victims and witnesses

The Special Court shall provide, in its rules of procedure and evidence, for the protection of victims and witnesses. Such measures shall include but not be limited to, holding closed examinations and keeping secret the identity of the victims.

Article 41
Judicial examination

The Special Court shall ensure a just and quick judicial examination and legal proceedings, in accordance with its rules of procedure and evidence, with full respect for the rights of the indictee and due provision for the protection of the victims and witnesses.

Article 42
Punishment

1. The punishment imposed by the Special Court shall be limited to imprisonment. In determining the term of imprisonment, the Court shall be guided by general practice in determining punishment for the offence referred to in article 2 under the legislation of the States parties.

2. In pronouncing sentence, the Special Court shall take into account such facts as the gravity of the offence and specific circumstances concerning the person of the indictee.

3. In addition to imprisonment, the Special Court may order the return to their legitimate owners of any property and income received as a result of the offence referred to in article 2 of this Convention, including by means of compulsion.

Article 43
Judgements

Judgements shall be given by a majority of the Special Court and announced by the Special Judicial Chamber publicly. They shall be supported by a justified opinion in writing, to which individual or separate opinions may be annexed.

Article 44
Appeal

1. The Appeals Chamber shall examine appeals submitted by persons sentenced by the Trial Chambers on the following grounds:

(a) In the case of a mistake in a matter of law, as a result of which the judgement loses its validity;

(b) In the case of a mistake in a matter of fact which resulted in an unjust judgement being handed down.

2. The Appeals Chamber may affirm, disaffirm or review court decisions made by the Trial Chambers.

Article 45
Execution of the sentence

Imprisonment shall take place in a State determined by the Special Court on the basis of a list of the States which declared to the Security Council their readiness to receive the sentenced persons. Such imprisonment shall take place in accordance with the applicable law of the State concerned, under the supervision of the Special Court.

Article 46
Pardon or mitigation of punishment

If, in accordance with the applicable law of the State in which the sentenced person is imprisoned, he/she has the right of pardon or mitigation of punishment, the State concerned shall duly inform the Special Court about that fact. The Chair of the Special Court, in consultation with the judges, shall take a decision with respect to that matter, on the basis of the interests of justice and general principles of law.

Article 47
Cooperation and judicial assistance

1. States shall comprehensively cooperate with the Special Court in investigations and in the judicial prosecution of persons charged with committing an offence of piracy as defined in article 2 of this Convention.

2. States shall, without any unjustified delay, comply with any requests for assistance and orders of the Special Court, including, but not limited to:

(a) The identification and location of persons;

(b) The taking of evidence and the execution of actions to gather evidence;

(c) The handing over of documents;

(d) The arrest or detention of persons;

(e) the extradition or transfer of indictees to the Special Court.

Article 48
Status, Privileges and Immunities of the Special Court

1. The Convention on the Privileges and Immunities of the United Nations of 13 February 1946 shall be applied with respect to the Special Court, the Judges, the Prosecutor and his personnel, as well as the Secretary and his personnel.

2. The Judges, the Prosecutor and the Secretary shall enjoy the privileges and immunities, the exemptions and privileges which are granted in accordance with international law to diplomatic representatives.

3. The personnel of the Prosecutor's Office and the Secretariat shall enjoy the privileges and immunities which are granted to officials of the United Nations in accordance with articles V and VII of the Convention on the Privileges and Immunities of the United Nations of 13 February 1946.

Article 49
General provisions

1. The working languages of the Special Court shall be English and French.

2. The site of the Special Court shall be the city of _____.

3. The expenses of the Special Court shall be charged to the regular budget of the United Nations, in accordance with Article 17 of the Charter of the United Nations.

4. The Chair of the Special Court shall submit an annual report to the General Assembly of the United Nations.

Chapter III
Final provisions

Article 50
Signature, accession and entry into effect

1. This Convention shall be open for signature in _____ from ____ to ____ 20__. The Convention shall thereafter remain open for accession. Documents of accession shall be deposited with the Secretary-General of the United Nations.

2. This Convention is subject to ratification. The instruments of ratification shall be deposited with the Secretary-General of the United Nations.

3. This Convention shall enter into force thirty days following the date on which the tenth instrument of ratification or accession is deposited.

4. For a State which signed this Convention or acceded to it after its entry into force in accordance with paragraph 3 of this article, it shall enter into force on the thirtieth day following the deposit by that State of its instrument of ratification or accession.

5. The Secretary-General of the United Nations shall inform all States which sign this Convention or accede to it about the date of each signature, the date of deposit of each instrument of ratification or accession and the date of entry into force of this Convention, as well as about other notifications.

Article 51
Relation to other conventions and international agreements

This Convention shall not alter the rights and obligations of States parties which arise from other agreements compatible with this Convention and which do not affect the enjoyment by other States parties of their rights or the performance of their obligations under this Convention.

Article 52
Denunciation

1. This Convention may be denounced by any State party at any time after one year has elapsed since the date on which this Convention enters into force for that State.

2. Denunciation shall be effected by the deposit of an instrument of denunciation with the Secretary-General of the United Nations.

3. Denunciation shall take effect one year, or such longer period as may be specified in the instrument of denunciation, after the date of receipt of the instrument by the Secretary-General.

In witness whereof the undersigned, being duly authorized by their respective Governments for that purpose, have signed this Convention.

Done in _____ on _____ 20__ in a single original in the Arabic, Chinese, English, French, Russian and Spanish languages, all texts being equally authentic.

United Nations A/65/490–S/2010/506

General Assembly
Security Council

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Sixty-fifth session
Agenda item 36
The situation in the Middle East

Security Council
Sixty-fifth year

Identical letters dated 1 October 2010 from the Permanent Representative of Lebanon to the United Nations addressed to the Secretary-General and the President of the Security Council

On instructions from my Government, I have the honour to transmit herewith a complaint against Israeli enemy forces who, on 20 September 2010, fired in the direction of Lebanese Army soldiers (see annex).

I should be grateful if you would have this letter and its annex circulated as a document of the sixty-fifth session of the General Assembly, under agenda item 36, and of the Security Council.

(*Signed*) Nawaf **Salam**
Ambassador
Permanent Representative

10-56817 (E) 061010 061010

Please recycle

Annex to the identical letters dated 1 October 2010 from the Permanent Representative of Lebanon to the United Nations addressed to the Secretary-General and the President of the Security Council

Lebanese Republic

Ministry of Foreign Affairs and Emigrants

At 1935 hours on 20 September 2010, Israeli enemy forces opposite the Lebanese Army Tall Ghaba in position on the outskirts of Duhaira fired some 12 rounds over Lebanese territory in the direction of soldiers who were fortifying the position. That act of aggression constitutes a flagrant violation of Lebanese sovereignty, international law and Security Council resolution 1701 (2006), and a threat to international peace and security.